

Joshua J.C. Ulloa #02758-093

NAME

United States Penitentiary LOMPOC
3901 Klein Blvd.

PRISON IDENTIFICATION/BOOKING NO.

Lompoc, California 93436-2706

ADDRESS OR PLACE OF CONFINEMENT

Note: If represented by an attorney, provide name, address & telephone number. It is your responsibility to notify the Clerk of Court in writing of any change of address.

FILED
DISTRICT COURT OF GUAM

NOV 01 2010

JEANNE G. OUMAYA
CLERK OF COURT

IN THE UNITED STATES
DISTRICT COURT OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

v.

Joshua J.C. Ulloa,
Petitioner.

FULL NAME OF MOVANT

(Include name under which you were convicted)

Petitioner.

CASE NUMBER:

CV

To be supplied by the Clerk of the United States District Court

CR

1:08-cr-00013 and 1:CR-07-00111
Criminal case under which sentence was imposed.

MOTION TO VACATE, SET ASIDE OR
CORRECT SENTENCE BY A PERSON IN
FEDERAL CUSTODY
28 U.S.C § 2255

INSTRUCTIONS - READ CAREFULLY

This motion must be legibly handwritten or typewritten and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form. Where more room is needed to answer any questions use reverse side of sheet.

Additional pages are not permitted. No citation or authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

Upon receipt, your motion will be filed if it is in proper order. NO FEE is required with this motion

If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to pay costs. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in a different districts, you must file separate motions as to each judgment.

Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.

When the motion is fully completed, the original and three (3) copies must be mailed to the Clerk of the United States District Court, whose address is 312 North Spring Street, Los Angeles, California 90012.

MOTION

1. Name and location of court which entered judgment of conviction under attack: District Court of Guam
(Hagatna).
2. Date of judgment of conviction: June 15, 2009
3. Length of sentence: 87 months Sentencing judge: Frances M. Tydingco-Gatewood
4. Nature of offense or offenses for which you were convicted: Count I, Drug User in Possession of a
Firearm, in violation of 18 U.S.C. §§922(g)(3) and 924(a)(2). & Count I, Conspiracy
to Manufacture Methamphetamine, in violation of 21 U.S.C. §§841(a)(1) and 846; Count
II: Aiding and Abetting the Attempted Manufacture of Methamphetamine in violation of
18 U.S.C. §2 and 21 U.S.C. §§841(a)(1) and 846; and Count III: Establishment of
Manufacturing Operations in violation of 21 U.S.C. §856(a)(2).

5. What was your plea? (check one)

☐ Not guilty
☒ Guilty
☐ Nolo Contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:
I pled guilty to Conspiracy to Manufacture Methamphetamine, in violation of 21
U.S.C. §§841(a)(1) and 846 found under §2D1.1 Unlawful Manufacturing, Importing,
Exporting, or Trafficking; Attempt to Conspiracy. There was also the 18 U.S.C.
922(g)(3) and 924(a)(2).

6. Kind of trial: (check one)

☐ Jury N/A
☐ Judge only

7. Did you testify at the trial?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☐ Yes ☒ No

9. If you did appeal, answer the following:

(a) Name of court Not Applicable.

(b) Result _____

(c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

☐ Yes ☒ No

11. If your answer to question number 10 was "yes", give the following information:

(a) (1) Name of Court Not Applicable.

(2) Nature of proceeding Not Applicable.

(3) Grounds raised Not Applicable.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☐ No N/A

(5) Result Not Applicable.

(6) Date of result _____

(b) (1) Name of Court Not Applicable.

(2) Nature of proceeding Not Applicable.

(3) Grounds raised Not Applicable.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☐ No N/A

(5) Result Not Applicable.

(6) Date of result Not Applicable.

(c) (1) Name of Court N/A

(2) Nature of proceeding N/A

(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☐ No N/A

(5) Result N/A

(6) Date of result N/A

(d) Did you appeal, to an appellate federal court having jurisdiction, the results of action taken on any petition, application or motion?

(1) First petition, etc. ☐ Yes ☐ No N/A

(2) Second petition, etc. ☐ Yes ☐ No N/A

(3) Third petition, etc. ☐ Yes ☐ No N/A

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:
N/A

12. State concisely every ground on which you claim that you are being held unlawfully.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date. For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you selected one or more of these grounds for relief, you must allege facts in support of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(e) Conviction obtained by violation of the privilege against self-incrimination.

(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(g) Conviction obtained by a violation of the protection against double jeopardy.

(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.

(i) Denial of effective assistance of counsel.

(j) Denial of right of appeal.

A. Ground one: Counsel Provided Ineffective Assistance of Counsel by Failing To Argue That The 14 level Enhancement Pursuant To §2D1.1(10)(D) For Endangerment of Minors And Ulloa's Impending State Charge On Child Endangerment Amounted To Double Jeopardy In Violation of The Constitution.

Supporting facts (tell your story briefly without citing cases or law): On 1/7/08, Ulloa was arrested by Guam Police Officers and charged with six counts of Child Endangerment after Methamphetamine paraphernalia was recovered in connection with a federal search warrant. **PSR, pg. 3, #3.**

Several weeks later Ulloa was placed in the custody of the United States Marshal's pursuant to a Writ of Habeas Corpus Ad Prosequendum. PSR, Pg. 4, #7. Subsequently, a 14 point enhancement was imposed, withstanding the impending State proceedings on the same. In addition, Ulloa was initially borrowed from the State to adjudicate the Weapons charge, while awaiting those proceedings Ulloa was indicted on the Conspiracy to Manufacture charge which resulted in the 14 point enhancement for endangerment of minors. Counsel failed to object in a timely fashion, or even discuss the Pre-Sentence Report with Ulloa until the Court discovered during sentencing that Ulloa had never seen or discussed the Pre-Sentence Report with counsel.

Mr. Ulloa Reserves The Right To File A Brief In Support Once His Transcripts Are Obtained

B. Ground Two: Counsel Provided Ineffective Assistance of Counsel By Failing To Discuss And Object To False Information In The Pre-Sentence Report Which Led To The 14 Point Enhancement.

Supporting facts (tell your story briefly without citing cases or law): Mr. Ulloa never seen or discussed his Pre-Sentence Report with counsel until during the sentencing hearing the Court discovered counsel had not discussed the Pre-Sentence Report with Ulloa. Doc. #47, Sentencing

Transcripts. The Court provided Counsel and Counsel 10 minutes in which Counsel did did not discuss the 14 level enhancement, its purpose. Counsel failed to objective to the enhancement which amounted to double jeopardy being that Ulloa had pled guilty to the pending charges. Ulloa reserves the right to file a Brief In Support Once His Transcripts Are Obtained.

Supporting facts (tell your story briefly without citing cases or law): _____

13. If any of the grounds listed in 12 A, B, C and D were not previously presented, state briefly what grounds were not presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

☐ Yes ☒ No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attached herein:

(a) At a preliminary hearing: Curtis Charles Van de veld

(b) At arraignment and plea: Curtis Charles Van de veld

(c) At trial: Curtis Charles Van de veld. (No Trial)

(d) At sentencing: Same.

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court at approximately the same time?

☒ Yes ☐ No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give the name and location of the court which imposed sentence to be served in the future: N/A

(b) Give the date and length of sentence to be served in the future: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed sentence to be served in the future?

☒ Yes ☐ No (Presently filing)

WHEREFORE, movant prays that the court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on June 2, 2010.

Date

Signature of Movant

Provided To Staff on June 3, 2010.

Certificate of Service

I, Joshua J.C. Ulloa, hereby certify that I have served a true and correct copy of the following, by placement in the inmate mail:
28 U.S.C. §2255 motion

Service of process is deemed complete at the time of delivery to the prison authorities for forwarding to the Court. *Houston v. Lack* 101 L.Ed.2d. 245 (1988) confirms that by such service upon the parties to litigation and or his/her attorney of record, by placement in a sealed, postage prepaid envelope addressed to:

United States Attorney's Office
520 West Soledad Avenue.
Hagatna, Guam 96910

United States District Court
Attn: Clerk of Court
520 West Soledad Avenue.
Hagatna, Guam 96910

and deposited in the United States Mail maintained by the USP Lompoc, Lompoc, California, all requirements of service of process required by law have been fulfilled this:

Second day of June, 2010.

United States Penitentiary
3901 Klein Boulevard
Lompoc, CA 93436

(Name) Mr. Joshua J.C. Ulloa

Reg No. 02758-093

Bureau of Prisons Identification Number

Mr. Joshua J.C. Ulloa
Reg No. 02758-093
USP LOMPOC
3901 Klein Blvd.
Lompoc, California 93436-2706

June 2, 2010.

To: United States District Court
Attn: Clerk of Court
520 West Soledad Avenue.
Hagatna, Guam 96910

Re: USA v. Joshua J.C. Ulloa.
Case No. 1:08-cr-00013 and 1:CR-07-00111

Dear Clerk of Court;

I'm forwarding this 28 U.S.C. §2255 motion to your office to be filed with the district court. I've been attempting to obtain the following transcripts for the past three months, can you please assist me in acknowledging the cost.

1. Plea Hearing Transcripts.
2. Plea Agreement.
3. Objection To the PSR.
4. Sentencing Transcripts.

Your assistance in respects to this matter would be greatly appreciated.

Sincerely,


Joshua JC Ulloa.

RECEIVED

NOV 01 2010

DISTRICT COURT OF GUAM
HAGATNA, GUAM



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DISTRICT COURT OF GUAM
HAGATNA, GUAM

↕ 02758-093 ↕

District Court Of Guam
Attn: Clerk of Court
4th Floor, US Courthouse
520 West Soledad Ave.
Hagatna, GU - 96932
United States

World: United States District Court
Eastern District of California
520 West 51st Street
Hawthorne, California 90230

Joshua J. [REDACTED]
United States Penitentiary, Los Angeles
3901 Klein Blvd.
Pomona, California 91768-2706